

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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SILVON S. SIMMONS,

Plaintiff,

vs.

**NOTICE OF MOTION TO  
COMPEL DISCOVERY**

**17-CV-6176-FPG-MWP**

JOSEPH M. FERRIGNO, II, SAMUEL  
GIANCURSIO, MARK WIATER,  
CHRISTOPHER MUSCATO, ROBERT  
WETZEL, MICHAEL L. CIMINELLI,  
JOHN DOES 1-20, CITY OF ROCHESTER,  
SHOTSPOTTER, INC., SST, INC.,  
JOHN DOES 21-30 and PAUL C. GREENE,

Defendants.

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PLEASE TAKE NOTICE that upon the annexed Affidavit of Charles F. Burkwit, duly sworn to the 17<sup>th</sup> day of March, 2021, and the exhibits annexed thereto, and upon all the pleadings and proceedings heretofore had herein, the undersigned will move this Court before the Honorable Marian W. Payson, at the United States Courthouse, 100 State Street, Rochester, New York at a Motion Term hereof, on the \_\_\_\_ day of \_\_\_\_\_, 2021 at \_\_\_\_ o'clock in the \_\_\_\_\_ noon of that day or as soon thereafter as counsel may be heard, for an order pursuant to FRCP 37 compelling Defendants Joseph M. Ferrigno, II, Samuel Giancursio, Mark Wiater, Christopher Muscato, Robert Wetzel, Michael L. Ciminelli, John Does 1-20 and City of Rochester to produce complete materials responsive to Plaintiff's First Request For Production of Documents, Electronically Stored Information and Tangible Things, dated January 27,

2020, granting a hearing pursuant to FRCP 37(e) to determine whether the City Defendants took reasonable steps to preserve AVLS/Trackstar reports and data and whether it can be retrieved, restored or produced through another source, imposing sanctions against the City Defendants and/or their counsel and awarding reasonable expenses incurred including attorney's fees caused by the continued failure of the City Defendants to comply with this Court's October 13, 2020 Decision & Order and January 13, 2021 Order and Amended Scheduling Order pursuant to FRCP 16(f), 37(b)(2)(A) and (C), issuing an Amended Scheduling Order extending the Amended Scheduling Order (Document 68) deadlines by 60 days pursuant to FRCP 16 (b)(4) and for such other and further relief as the Court may deem just and proper; and

PLEASE TAKE FURTHER NOTICE, that pursuant to Rule 7(a)(1) of the Local Rules of this Court, the Plaintiff intends to file and serve reply papers and therefore, pursuant to Rule 7(b)(2)(B), Defendants are required to serve responding papers, if any, at least seven (7) days prior to the return date of this motion.

Dated: March 17, 2021

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